

CHAPTER 24:05:24.01

ELIGIBILITY CRITERIA

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24:05:24.01:01. Students with disabilities defined. Students with disabilities are students evaluated in accordance with chapter 24:05:25 as having autism, deaf-blindness, deafness, hearing loss ~~impairment~~, cognitive disability ~~mental retardation~~, multiple disabilities, orthopedic impairment, other health impairments, emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, or vision loss, ~~visual impairments~~ including blindness, which adversely affects educational performance, and who, because of those disabilities, need special education or special

education and related services. If it is determined through an appropriate evaluation, under chapter 24:05:25, that a student has one of the disabilities identified in this chapter, but only needs a related service and not special education, the student is not a student with a disability under this article. If, consistent with this chapter, the related service required by the student is considered special education, the student is a student with a disability under this article.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:07. Deaf-blindness defined. ~~Deaf-blindness means that hearing and visual impairments affect a student at the same time. Students may be identified as deaf-blind when both vision and hearing impairments exist which are so severe that their sensory acuity cannot be determined and adaptations in both auditory and visual modes are required, or there is no response to auditory and visual stimuli.~~

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:08. Deafness defined. Deafness is a hearing loss ~~impairment~~ that is so severe that the student is impaired in processing linguistic information through hearing, even with amplification, and that adversely affects a student's educational performance.

A student may be identified as deaf ~~when~~ if the unaided hearing loss is in excess of 70 decibels and precludes understanding of speech through the auditory mechanism, even with amplification, and the student demonstrates an inability to process linguistic information through hearing, even with amplification.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:09. Developmental delay defined. A student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01 or if the student experiences a severe delay in development and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or ~~and~~ emotional development, and adaptive development functioning skills.

The student may not be identified as a student with a disability if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the division's definition of the term and to the age range that has been adopted by the division.

A district shall ensure that all of the student's special education and related services needs that have been identified through the evaluation procedures described under chapter 24:05:25 are appropriately addressed.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:10. Hearing ~~impairment~~ loss defined. A student may be identified as having a hearing loss ~~impaired~~ if an unaided hearing loss of 35 to 69 decibels is present that makes the acquisition of receptive and expressive language skills difficult with or without the help of amplification.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-1-12.1, 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:11. ~~Mental-retardation~~ Cognitive disability defined. ~~Mental retardation~~ Cognitive disability is significantly below-average general intellectual functioning existing that exists concurrently with deficits in adaptive behavior ~~and skills~~, that is generally manifested before age eighteen, and that adversely affects a student's educational performance. The required evaluative components for identifying a student with ~~mental-retardation~~ a cognitive disability are as follows:

(1) General intellectual functioning two standard deviations or more below the mean as determined by the full scale score on an individual cognitive evaluation, plus or

minus standard error of measurement, as determined in accordance with § 24:05:25:04; and

(2) Exhibits deficits in adaptive behavior and academic or preacademic skills as determined by an individual evaluation in accordance with § 24:05:25:04.

Source: 23 SDR 31, effective September 8, 1996; 23 SDR 139, effective March 10, 1997.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:12. Multiple disabilities defined. ~~Multiple disabilities means that two or more of the following disabilities affect the student at the same time: deafness, mental retardation, orthopedic impairment, other health impairment, serious emotional disturbance, speech or language impairment, traumatic brain injury, and visual impairment including blindness. The term does not include deaf blindness.~~

Multiple disabilities means concomitant impairments (such as a cognitive disability-blindness or a cognitive disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:13. Orthopedic impairment defined. ~~Orthopedic impairment is an impairment caused by a congenital anomaly, such as a club foot or absence of some member; a disease, such as poliomyelitis or bone tuberculosis; or another cause, such as cerebral palsy, an amputation, or a fracture or burn that causes contractures.~~

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

There must be evidence of the following:

(1) That the student's impaired motor functioning significantly interferes with educational performance;

(2) That the student exhibits deficits in muscular or neuromuscular functioning that significantly limit the student's ability to move about, sit, or manipulate materials required for learning;

(3) That the student's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills; and

(4) That current medical data by a qualified medical evaluator describes and confirms an orthopedic impairment.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:14. Other health impaired defined. Other health impaired means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, because of a chronic or acute health problem, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, Tourette syndrome, or diabetes, that adversely affects a student's educational performance.

Adverse effects in educational performance must be verified through the ~~multidisciplinary~~ full and individual evaluation process as defined in subdivision 24:05:13:01(18).

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:16. Emotional disturbance defined. Emotional disturbance is a condition that exhibits one or more of the following characteristics to a marked degree over a long period of time:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) Inappropriate types of behavior or feelings under normal circumstances;
- (4) A general pervasive mood of unhappiness or depression; or
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

~~An emotional disturbance is not a transient expected response to stressors in the individual's environment; or misbehavior that can generally be corrected by environmental intervention. Environmental intervention includes feedback to the~~

~~individual, advice to parents, and modifications and strategies addressed through teacher assistance team programs, or similar programs.~~

The term, emotional disturbance, includes schizophrenia. The term does not apply to a student who is socially maladjusted unless ~~a multidisciplinary evaluation~~ the IEP team determines pursuant to § 24:05:24.01:17 that the student has an emotional disturbance.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:17. Criteria for emotional disturbance. A student may be identified as emotionally disturbed if the following requirements are met:

(1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from the school and one or more other sources of the frequency and severity of the targeted behaviors;

(2) The ~~students~~ student's performance falls two standard deviations or more below the mean in emotional functions, as measured in school, home, and community on nationally normed technically adequate measures; and

(3) An adverse effect on educational performance is verified through the multidisciplinary evaluation process as defined in subdivision 24:05:13:01(18).

A student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:18. Specific learning disability defined. Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in ~~an~~ the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The ~~terms do~~ term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities; ~~mental retardation~~ cognitive disability; emotional disturbance; or environmental, cultural, or economic disadvantage.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:19. Criteria for specific learning disability. A group of qualified professionals and the parent of the child may determine that a child has a specific learning disability if:

(1) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, if provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- (a) Oral expression;
- (b) Listening comprehension;
- (c) Written expression;
- (d) Basic reading skill;
- (e) Reading fluency skills;
- (f) Reading comprehension;
- (g) Mathematics calculation; and
- (h) Mathematics problem solving;

(2) (a) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or

(b) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with this article; and

(3) The group determines that its findings under this section are not primarily the result of:

- (a) A visual, hearing, or motor disability;
- (b) A cognitive disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in this article, data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and data-based documentation of repeated assessments of achievement at reasonable

intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The school district must promptly request parental consent to evaluate the child to determine whether the child needs special education and related services, and must adhere to the timeframes described in this article unless extended by mutual written agreement of the child's parents and a group of qualified professionals. The district must request such consent if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section, and whenever a child is referred for an evaluation.

~~A student may be identified as having a specific learning disability under the following circumstances:~~

~~(1) The student does not achieve commensurate with the student's age and ability levels in one or more of the areas listed in subdivision (2) of this section when provided with learning experiences appropriate for the student's age and ability levels; and~~

~~(2) The team finds that a student has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the following areas:~~

- ~~(a) Oral expression;~~
- ~~(b) Listening comprehension;~~
- ~~(c) Written expression;~~
- ~~(d) Basic reading skill;~~
- ~~(e) Reading comprehension;~~
- ~~(f) Mathematical calculation; or~~
- ~~(g) Mathematical reasoning.~~

~~The team must consider regression to the mean in determining this discrepancy.~~

~~When using a measure of intellectual functioning which has verbal and performance subscales, the total score must be used unless there is a difference of more than one standard deviation between the two scores. If there is a difference of more than one standard deviation between the two subscales, the higher scale must be used.~~

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:20. Speech or language disorder defined. Speech or language impairment is a communication disorder such as stuttering, impaired articulation, a language disorder, or a voice disorder that adversely affects a child's educational performance.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:24. Criteria for fluency disorder. A student may be identified as having a fluency disorder if:

(1) The student consistently exhibits one or more of the following symptomatic behaviors of dysfluency:

- (a) Sound, ~~symbolic~~ syllable, or word repetition;
- (b) Prolongations of sounds, syllables, or words;
- (c) Blockages; or
- (d) Hesitations.

(2) There is a significant discrepancy from the norm as measured by speech sampling in a variety of contexts. A significant discrepancy from the norm is five dysfluencies a minute; or

(3) The disruption occurs to the degree that the individual or persons who listen to the individual react to the manner of speech and the disruptions in a way that impedes communication.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:30 ~~Visual impairment~~ Vision loss including blindness defined. ~~Visual impairment~~ Vision loss including blindness is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

A student with a ~~visual impairment~~ vision loss has a deficiency in visual acuity that, even with the use of lenses or corrective devices, requires special education or special education and related services.

Partial sight is one or more deficiencies in visual acuity, as follows:

- (1) Visual acuity of no better than 20/70 in the better eye after correction;
- (2) Restricted visual field;
- (3) Limited ability to move about safely in the environment because of visual disability;

Blindness is a deficiency in visual acuity of 20/200 or less in the better eye with correcting lenses or a limited field of vision in which the widest diameter subtends an

angular distance of no greater than twenty degrees or has a medically indicated expectation of visual deterioration.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.